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THE STATE OF AMERICAN INTELLIGENCE TODAY

This afternoon I would like to talk with you about how and why the United States is bringing its intelligence activities under the control of law and regulation to a degree that has never been seen before in the world of spies.

Are spying and law compatible? I think they can be. Must regulation weaken the intelligence service? I think not. But intelligence in the United States today is undergoing far-ranging and fundamental changes. Before I talk specifically about these changes which new legal constraints are bringing about, let me outline some of the other changes that are taking place so that you can put this all in perspective.

These changes today stem from three basic factors: first, the evolving attitude of the United States toward its role in international affairs; secondly, the greatly increasing sophistication with which we collect intelligence information; and thirdly, the much greater interest of the American public in our intelligence activities.

Let me start with the question of the evolving perception of the United States of its role in world affairs. Today public attitudes toward foreign affairs are clearly in transition. We are moving from an activist, interventionist outlook to one which recognizes much more clearly the limits on our ability to influence events in foreign countries. We are not becoming isolationists. We are coming to a more balanced view after our post-Vietnam paranoia with intervention, a more balanced view of where and what we can do on the international scene. There is no question that we must always play a major role on that scene but today it must be gauged much more carefully than ever before.

Look, for instance, at the traditional feeling in the United States that it is important for us to intervene almost anywhere in the world where the Soviets are gaining an advantage. I think this view stems partly from assumptions that once communist influence is established in a country, it is irreversible. But is that view really warranted today? Look back for example on Egypt, Indonesia, the Sudan, and Somalia. These are all countries that were subjected to considerable communist influence and, yet, have come back to freedom and independence. It is increasingly clear that the United States cannot take sides in all international conflicts. But it must have good intelligence to tell us where and when it is in the long-term interests of this country to intervene.

And, when we do take sides, we have to question whose side we should take. Traditionally we have favored those whom the Soviets were against. In the last year and a half, however, we have seen at least two instances where two communist states were pitted against each other. The Soviets took one side, but in neither case was the opposing side an appropriate country for us to support.

Another constraint in attempting to influence world events derives from the technological revolution in international communications. Today action on the international scene is instantly communicated around the globe, instantly judged. The certainty of this spotlight of publicity inhibits major and minor powers. Thus our foreign policy moves today must be more subtle, more understanding of events and trends all around the globe.

What these changes in our approach to foreign affairs means for intelligence is simply that our sphere of interests has vastly expanded. We must be more astute about more areas of the world and better informed about more topics than ever before. We must be concerned not just with military affairs, but also with political events, economic trends, food resources, population growth, illegal narcotics, international terrorism, the illegal transfer of American technology. Intelligence faces a more demanding set of requirements than ever before.

The second trend I mentioned is the technological revolution in how we go about collecting intelligence. Basically there are three means of collecting intelligence. The first is photographic--from satellites, from aircraft. The second is signals intercept--intercepting emissions that are in this room now, some of them military emanations, some of them communications signals. And the third is human intelligence--the traditional spy.

Our capabilities in the photographic and signals intelligence areas are growing immensely thanks to the great sophistication of American industry. There is so much information flowing, in fact, that our real problem is how to process, evaluate and act on what we are able to collect. Interestingly though, rather than devaluating the importance of the human intelligence agent, these burgeoning photographic and signals capabilities have enhanced the importance of human intelligence. Why? Because the information that you obtain technically, generally tells you something that happened in the past. When you give this to a policy maker he asks why that happened and what is going to happen next. Deducing the intentions, the plans, the incentives of foreign individuals or nations is the unique forte of the human intelligence agent.

Thus, today our challenge is not only to be able to absorb and use the vast quantities of data we get from photographs and signals, but to be able to meld them with human intelligence activities. We must be able to orchestrate all of this in a complementary manner so that we can obtain for this country the information it needs to conduct its foreign policy with minimum risk and minimum cost.

This sounds logical and simple, but as you are aware, the intelligence activities of our country are spread across a number of government agencies and departments, each with its own priorities. We cannot handle this vast flow of intelligence adequately if we adhere to the traditional, compartmented and parochial ways of doing business within that bureaucracy. Accordingly, some fundamental restructuring is taking place. A year and a half ago the President signed a new executive order which gave to the Director of Central Intelligence new authorities over the budgets and the collection activities of all of our national intelligence organizations. The task of developing a sense of teamwork among these various agencies, bureaus and organizations is still evolving. But the process is having a substantial effect on our whole intelligence organization.

The third element of change I mentioned is the increasing public attention to intelligence activities since the investigations of 1975 and 1976. Those investigations brought to American intelligence more public attention than has ever been focused on a major intelligence organization. That process has, I'm afraid, destroyed some of the support and confidence which the public has traditionally had for its intelligence services. While today I sense a gradual return of that support and confidence, I also recognize a lingering suspicion as to whether intelligence organizations are invading the privacy of the American citizen. I can assure you they are not. But, we need to continue to reassure the American public to that effect.

However, enough of the allegations of the past and of the past abuses were correct--even though there was much exaggeration--that we do warrant stricter controls today. So today we have a new set of oversight procedures which serve as a very important check on intelligence activities. The President himself takes a direct and personal interest in what we do. He is helped by an Intelligence Oversight Board which is constituted to look into the legality and the propriety of our intelligence activities and to report only to him. Beyond that, two committees of the Congress are each empowered exclusively to conduct oversight of intelligence. And finally, the media is more interested and more persevering than ever before in finding out what is going on in the world of intelligence.

The impact of all this added visibility has been substantial. Not surprisingly, it has been traumatic within the intelligence organization itself. Some of the publicity we receive is wanted because it helps to regenerate confidence that we are not violating the rights of our citizens. On the other hand, much of the publicity is unwanted because it is destructive. This involves the unauthorized disclosure of legitimate intelligence activity. These kinds of disclosures are seriously demoralizing to intelligence services which have traditionally, and of necessity, operated largely in secret. A CIA case officer overseas attempting to persuade a foreign person to spy on behalf of this country, perhaps at the risk of their life, must be confident that he can assure that person that his identity will not become public. Today while we do protect such information, the plethora of leaks within the government has created a perception that we cannot protect necessary secrets from disclosure. This has hurt intelligence activities.

As a result, I have proposed a new criminal statute which would make it an offense to disclose the identity of undercover CIA persons and agents whose relationship with the Central Intelligence Agency must be deliberately concealed. Our proposal is now being reviewed by the Administration. I hope it will soon be approved and enacted into law. Senator Benson of Texas has already introduced his own version of this bill and several other versions have been introduced in the House. Legislation such as this and another bill narrowing what we are required to provide under the Freedom of Information Act would be most helpful to us and beneficial to the nation. They are both examples of our increasing interaction with the law.

This interaction is not always that easy or straightforward from our point of view. With the increasing legal implications of almost everything we do, the natural tension between the effective administration of justice and the safeguarding of intelligence secrets is bound to increase. For instance, I hardly need remind you that criminal justice requires that all relative information be made available to the prosecution and the defense. Yet you can appreciate that national intelligence interests often require that evidence derived from intelligence sources not be disclosed. The resulting dilemmas can be very painful. Are they real dilemmas? Yes. When the Attorney General of the United States found it necessary last winter to abort the prosecution of two ITT officials to prevent disclosure of intelligence secrets, that was a genuine dilemma.

There would be no dilemma only if on the scale of national values every law enforcement interest took precedence over every intelligence interest. In such cases intelligence information would always be adduced when necessary for prosecution. Or, if on the other hand, law enforcement interests were always subordinated to intelligence interests, the prosecution would be aborted whenever intelligence secrets might be disclosed. Clearly, neither of these views is correct. The values are variable and cannot be readily weighed in advance. Each case must be separately judged on its own merits and intelligence interests must be placed in perspective with other national interests, then a decision made as to whether and on what basis to prosecute. It is the Attorney General who has the discretion to decide whether prosecution is warranted and how to go forward.

That is not to say, however, that I have no role in influencing that decison when intelligence interests are concerned. On the contrary, I have two necessary tasks. First, I am responsible for ensuring that the Attorney General has all relevant information on which to make his decision. Access to information regardless of its classification should not be a point of dispute. In my view, the Attorney General has a clear right to review all information so that his decisions are made with the fullest perspectives. Beyond this, I am responsible for giving the Attorney General my estimate of the potential impact of the public disclosure of intelligence information relevant to any particular prosecution. Again, I believe that the Attorney General must have this kind of advice if he is going to make sound and balanced decisions.

If it happens that the Attorney General makes a decision to prosecute with which I cannot agree, I must then appeal to the President and ask him to decide whether the best interests of the country are favored by prosecution or not. In brief, I cannot frustrate a prosecution simply by withholding secret information. That choice lies with the Attorney General. I can appeal that choice if I do not agree with it. In the two and a half years that I have been privileged to work on problems like this with our Attorney General, Griffin Bell, we have never had, because of his great cooperativeness, anything but a harmonious resolution of these issues. But they have not been easy for either one of us.

There are, as you would appreciate best, fundamental reasons why this issue of disclosure versus prosecution presents us such difficulty. One is simply the fact that a criminal trial in this country is a public event. I have no quarrel with the constitutional guarantees that make it so. At the same time, I cannot ignore the fact that the evidentiary use of intelligence in a public prosecution results in a high probability that the information will enter public domain. There are few, if any, ways to avoid that outcome or to limit the exposure of information to trial participants only. Other constitutional provisions guarantee the accused broad rights of cross-examination. Rules of procedure confer on the defense wide-ranging pretrial discovery. These features make the judicial process almost as uncertain as it is open. For example, the ways that defense discovery and cross-examination will be handled do not lend themselves to precise advance measurement. They are unpredictable, so the decision to prosecute is all the more difficult for those who must gauge before the course is set where it may all end. Again, I am not complaining about any of this or suggesting any radical reforms that would restrict the rights of the accused. I am only trying to describe to you how it looks from my perspective.

All of this takes on greater force when you consider the necessities of proof under some of the basic criminal statutes related to intelligence. Let us suppose, for example, that a government employee is arrested while trying to deliver a classified document to a foreign agent and the delivery is frustrated by that arrest. A crime has been committed nonetheless. There are espionage laws and yet prosecution would exact an extraordinary threat. The government would have to show that the information in that document was so significant that the national security interests of our country would be severely damaged if it were revealed to a foreign government. That burden of proof would very likely require that we would have to adduce that document in court. And moreover, we would probably have to provide a government witness to testify to its accuracy. Unfortunately, the US judicial procedures today provide no way of assuring secrecy of such information that may have to be disclosed at prosecution. The result would be that the trial proceedings themselves would have succeeded in doing exactly what the defendant was being tried for having attempted and failed to do, disclosing the information. Moreover, in this case the accuracy of that information would have been attested to by the government in the process.

We have avoided the dilemma that I have just described in a trial just recently. So, it can be done but it is difficult and it is very risky and uncertain from our point of view. Thus we have a real conflict between what is needed to prosecute effectively and what is needed to protect our sources. The conflict has discouraged exploitation of clandestine sources of information which might detect hostile penetrations of our own government. In short, the conduct of counterintelligence. After all, if one must compromise his source of information to use that information in the courts and if one thinks that that compromise might result in the death of his source, there is no way that a CIA officer can in good conscience encourage such a source to reveal counterintelligence information. This is the kind of issue that so complicates these decisions on whether or not we prosecute.

Another well publicized problem in trial proceedings is the last minute discovery blitz, a technique favored by defense counsels in some espionage cases like, for example, the case of the United States vs. Kampiles last year. It is unfortunately true that whenever intelligence is involved, it is inviting for a defense attorney to hope to paralyze the prosecution by pressing for more disclosure than he thinks we can possibly permit. Hence today we are confronted with the problem of graymail, a shotgun approach against which there is no easy countertactic. Judges, of course, are not entirely insensitive to these dilemmas. They will, from time to time, regulate pretrial discovery in espionage cases by protective orders for instance, affording the defendants and defense counsel access to sensitive materials but restricting the freedom they have to disseminate that material further. Unfortunately the terms of these orders have varied widely, with little apparent relation to the differences in the cases themselves.

To deal in a more orderly fashion with this issue, the Administration last month introduced legislation that would establish a pretrial and a trial procedure for resolving questions over use of classified information in criminal trials. When enacted, the legislation will allow the government to obtain advanced rulings on whether classified information is relevant or may otherwise be used or disclosed during a public trial. This will allow the government to determine more clearly whether the needs of national security require dropping a prosecution.

Let me not, however, leave you with an impression that all of the interests of intelligence lie on the side of not disclosing or not prosecuting. We have legitimate interests on both sides of the issue. Our genuine concern is for protecting national secrets. Beyond the harm to individuals which I have mentioned several times, there is a wide range of clear damage to our national interests when secret information is disclosed. Negotiations with foreign countries may be frustrated; our access to further information may be jeopardized; foreign intelligence services may be unwilling to share information with us if they view us as an information sieve; and the expensive technical collection systems I mentioned earlier can be compromised and frustrated if their characteristics are disclosed.

Thus, even though we are generally inclined, perhaps overly inclined, to hold back from prosecutions to protect classified information, there are also many cases in which we want to see the prosecution proceed. Those that concern us most, of course, are espionage cases. But beyond that, there are those in which irresponsible individuals, even traitorous individuals, deliberately disclose classified information. The seriousness of these losses causes us to support strongly the prosecution of such people. In my view, they not only deserve whatever punishment may result from prosecution, but we need to prosecute to deter others. Thus we do have an incentive to bend over backwards in releasing information essential to prosecution in such cases. In the two and a half years that I have been Director of Central Intelligence, I have held my breath a half a dozen times when permitting disclosures in espionage cases.

Other dilemmas we face center on the many rules and regulations recently applied to intelligence activities, especially those to ensure the privacy of American citizens. Because they are new and often complex and because they must be interpreted in the light of our sometimes unique activities, they have had a heavy impact on the speed and flexibility with which we have been traditionally capable of operating. Very often questions of constitutional law have required both the Attorney General's staff and my legal staff to issue legal decisions in the midst of an operational crisis. In all such instances the Attorney General and his staff have gone out of their way to give us timely advice and opinions but still, our options have often been limited because of this.

Let me give you one example. Over a year ago a country was under siege. The best information coming out of that country came from the ham radio of an American missionary. But, a Presidential executive order prohibited our conducting electronic surveillance of American persons. The issue here then was at what stage would the interception of the ham radio transmissions be illegal? A ruling was finally made that as long as the missionary stuck to the CB and normal ham radio bands, it was alright. But if he tried to disguise his broadcast as well he might because he was in danger because of his transmissions, that would indicate his desire for privacy and we would have to cease listening--and cease learning what was going on and whether he was still safe.

Nonetheless, we recognize and applaud the overall efforts to ensure the constitutional rights of American citizens. But the issues are very complex and must be interpreted by people in the field who are not attorneys. The initiative of the intelligence operator can be dulled by this need to ensure that all applicable legal standards are met. Uncertainty can lead to overcaution and reduced capability. Today, our operators are almost forced to avoid operations when there is a probability that an American may be involved. This reduces our flexibility to respond in crisis situations when the lives and the property of American citizens may be at stake.

It is my hope that much of this can be corrected by the passage by this Congress of charters for the Intelligence Community. This legislation would establish for the first time both the authorities for specific intelligence activities and the boundaries within which they must be conducted.

Written with care and sensitivity to the kinds of problems that I have been discussing, they could help resolve some of the problems. Overreaction, either by turning the Intelligence Community totally loose or by tying its hands, would be a mistake; on the one hand inviting repetition of past abuses, on the other, weakening the necessary intelligence capabilities.

In conclusion, let me assure you that the intelligence arm of our government is strong and capable. It is undergoing substantial change and that is never easy in a large bureaucracy. But out of this present metamorphosis is emerging an intelligence organization in which the legal rights of its citizens and the legal constraints on intelligence activities are balanced with our continuing need to gather information essential in the conduct of foreign policy. The transition is not easy. We are not there yet. But we are moving rapidly and surely in the right direction. When we reach our goal we will have constructed a new model of intelligence, a uniquely American model of intelligence, suited to the goals and the ideals of this country. As we proceed we will need your understanding and your support, particularly in these delicate legal areas. I am therefore grateful that you have asked me to be here today and given me this opportunity to share these thoughts with you. I look forward to responding to your questions. Thank you.